

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, DE 19801-3733
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August 25, 2011

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RE: *State v. Omari E. Clark*
ID# 1006026385

Upon Defendant's Motion for a New Trial - DENIED.

Dear Counsel:

After Defendant was convicted by a jury on May 12, 2011, of manslaughter and possession of a deadly weapon during the commission of a felony, he filed a timely motion for a new trial. Basically, on June 29, 2010, Defendant accosted the victim at the victim's home. The victim was the grandfather of Defendant's young daughter. Defendant went to the victim's home ostensibly to retrieve the girl. For reasons that are in dispute, the victim and his family chased Defendant away. Defendant, however, "grabbed a knife," and returned to the victim's home. During a violent, hand-to-hand confrontation, Defendant fatally stabbed the victim in the gut.

Although Defendant was not justified in returning to the victim's place, much less with a deadly weapon, he claimed that the killing was justified as self-defense.¹ Alternatively, he claimed that rather than being intentional but justified, the killing was a product of his reckless state of mind. Therefore, were he not absolved for killing through justification, he was entitled to an instruction on manslaughter committed through recklessness.²

Having decided that Defendant's alternative theories were not inherently contradictory, the court was left to the challenge of instructing the jury about the somewhat inconsistent, alternative theories. The jury had to understand that an intentional killing could be justified if the killing happened under facts satisfying the law of self-defense. The jury also had to understand that a reckless killing was manslaughter, a lesser-included offense of first degree murder. Moreover, the jury also had to understand that intentional and reckless mindsets are different, and a reckless killing cannot be justified.

Defendant brought the jury instruction issues to a head during the trial, and there was considerable back-and-forth about them. Although the instructions, as given, did not meet Defendant's objections, there is an extensive record, including the bench rulings.

In short, the court stands by the instructions that were given. If anything, the verdict reinforces the court's insistence. Defendant's entitlement to a justification instruction, under the most charitable view of his testimony was marginal. Again, Defendant armed himself intending to provoke a confrontation at the victim's home. Rather than enlist the authorities' help with whatever threats, real or imagined, Defendant perceived that the victim and his family posed to Defendant's daughter, Defendant decided to take things into his own hands. Although Defendant had a lot

¹11 *Del.C.* §§ 464-5.

²11 *Del.C.* §632.

Brian J. Robertson, Deputy Attorney General
Sarita R. Wright, Deputy Attorney General
Joseph A. Hurley, Esquire
Letter/Order
August 25, 2011
Page 3

of explanations, he did not deny that he was resorting to self-help after time to reflect and settle down.

Nevertheless, the jury was instructed on justification for the use of force in self-defense. Although, on the record before it, the jury could easily have found him guilty of murder in the first degree or second degree, it found Defendant guilty of the lowest level of homicide reasonably possible, consistent with the evidence presented. The jury probably agreed that Defendant did not start the final confrontation intending to kill anyone and the killing happened during a physical struggle. Thus, it can be said that the verdict reflects the most accurate version of the facts, rather than confusion or any misunderstanding of the law. Defendant had a fair trial. The instructions and the jury got it right.

For the foregoing reasons, and for the reasons of record, Defendant's motion for new trial is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS: mes
cc: Prothonotary (Criminal)